CENTER for CIVIL JUSTICE
Fighting Poverty Through Advocacy.

October 2, 2015

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ATTN: Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

RE Comments to Michigan Department of Health and Human Services' Healthy Michigan Plan Application for a Second Waiver

To Whom It May Concern:

The Center for Civil Justice[1] would like to thank you for the opportunity to comment on the Michigan Department of Health and Human Services' (MDHHS) proposed waiver amendment regarding the Healthy Michigan Plan (HMP), which was submitted to the Centers for Medicare & Medicaid Services (CMS) on September 1, 2015. The Center for Civil Justice is a non-profit organization in Michigan that advocates on behalf of low-income individuals on a wide-range of issues, including public benefits.

The Center for Civil Justice strongly supported the current HMP Section 1115 waiver, which was approved in late 2013, became effective on April 1, 2014, and expanded Medicaid to a new adult population.[2] The seventeen months since MDHHS began offering HMP coverage to Michigan residents have proven the overall success of this program—with nearly 600,000 individuals now receiving health care coverage through this program.[3] Notably, the 2013 HMP Section 1115 waiver that now provides health care coverage to hundreds of thousands of Michiganders was approved by CMS to continue through December 31, 2018.[4]

Due to a Michigan state law, MDHHS was required to seek a second HMP waiver from CMS by September 1, 2015.[5] This second HMP waiver seeks to dramatically change the first—and currently operating—HMP waiver by requiring individuals who are between 100% and 133% of the federal poverty level and "who have had medical assistance coverage for 48 cumulative months" to choose from two options: (1) "change their medical assistance program

[1] The Center for Civil Justice is a member of the Michigan Medical Care Advisory Council (MCAC). The MCAC comments submitted to CMS on October 1, 2015 were not supported by the Center for Civil Justice, although MCAC member objections were not reflected in the October 1, 2015 MCAC comments.
[2] December 30, 2013 CMS Letter to S. Fitton approving the "Healthy Michigan Section 1115 Demonstration," available at http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/mi/mi-healthy-michigan-ca.pdf.
[3] As of September 28, 2015, 599,917 individuals were enrolled in the Healthy Michigan Plan. Information available at http://www.michigan.gov/mdch/0,4612,7-132-2943_66797---,00.html.
[4] December 30, 2013 CMS Letter to S. Fitton approving the "Healthy Michigan Section 1115 Demonstration."
[5] M.C.L. 400.105d(20).

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eligibility status" to be eligible for subsidies and tax credits from the federal government in order to purchase private health insurance on the federally funded marketplace; or (2) continue to receive medical assistance, but have their cost-sharing limit increase from 5% to 7% of their quarterly income and their enrollee contributions increase from 2% to 3.5% of their income.[6]

Written into this law is an ultimatum: either MDHHS must get approval for this second HMP waiver from CMS by the end of 2015, or HMP for all 600,000 presently enrolled individuals will end pursuant to this state law in April 2016—just two years after the HMP program started.[7] This ultimatum should be rejected by CMS as the dramatic changes to the current HMP waiver would not only be extremely detrimental to beneficiaries and raise substantial legal questions and issues, but are also completely unnecessary given that the current HMP waiver program has already been by approved by CMS to continue operating through December 31, 2018.

The Proposed Increases in Cost-Sharing and Enrollee Contributions Undermine the Objectives of the Medicaid Program.

Increasing the cost-sharing and enrollee-contributions requirements for low-income individuals would not only fail to advance the goals of the Medicaid program, but would actually undermine these goals. The principal goal of the Medicaid program is to provide access to health care services to vulnerable populations, who would otherwise not have access to affordable health care. The proposed increase in cost-sharing to 7% would exceed the current cap allowed by federal law, which was imposed with the goal of access in mind.[8] This federal cap was strategically set as there is ample research that indicates higher cost-sharing requirements result in lower enrollment rates, increased disenrollment rates, increased uninsured rates, and increased reports of unmet health care needs[9]— all of which are antithetical to the goals of the Medicaid program.

The Proposed Time Limits for Medicaid Undermine the Objectives of the Medicaid Program and Are Arbitrary.

By imposing a 48-month time limit for Medicaid recipients, after which they will incur increased cost-sharing and contribution costs or be forced to seek less comprehensive private health care coverage through the federally funded marketplace, MDHHS is creating two distinct groups of individuals who will be receiving different levels of coverage. Individuals who are Medicaid eligible but who elect to purchase through the marketplace will receive more limited coverage than individuals who elect to continue to receive services through Medicaid with

[6] *Id.*
[7] M.C.L. 400.105d(23).
[8] 42 C.F.R. 447.56(f).
[9] Kaiser Commission on Medicaid and the Uninsured, February 2013 Issue Paper: Premiums and Cost-Sharing in Medicaid: A Review of Research Findings, available at https://kaiserfamilyfoundation.files.wordpress.com/2013/02/8417-premiums-and-cost-sharing-in-medicaid.pdf.

increased cost-sharing and contributions. MDHHS is essentially seeking to create a partial HMP program that does not comparably cover all individuals in the adult Medicaid expansion group.

In creating this partial HMP program, Michigan offers no justification for the 48-month time limit requirement. The 48-month time limit is simply arbitrary, and consequently, subject to further change in the future. Furthermore, because the 48 months are counted cumulatively, the time limit creates an incentive for recipients to forgo coverage for some months, in an effort to save their months of coverage for future months in which they may have higher medical needs and expenses. To set a precedent by which Michigan could impose arbitrary time limits for Medicaid would not only undermine the Medicaid program's goal of providing health care services to vulnerable populations, but would also undermine efforts to improve wellness by preventing and managing chronic health conditions through continuity of access and care.

Furthermore, MDDHS' application does not address the process by which beneficiaries who reach the 48-month limit will be given the option to "change their Medicaid Health Plan eligibility status to receive services from a Qualified Health Plan (QHP)" through the federally funded marketplace.[10] MDDHS offers no assurances that recipients would be adequately notified of key differences between their current Medicaid coverage and coverage available in the federally funded marketplace (e.g., lack of dental care coverage and other wrap-around services), or that they have the option to leave the marketplace and return to Medicaid.

A Termination of HMP Benefits Without Conducting Proper Ex Parte Reviews Would Violate the Federal Rights of All 600,000 Current HMP Recipients.

Although the MDHHS HMP waiver application does not address what is required if the Michigan legislature does not act to amend the ultimatum written in the statute, the statute itself merely requires the MDHHS to provide HMP recipients a notice four months in advance stating that HMP recipients' benefits will end on April 30, 2016. However, this state statutory notice requirement fails to address how MDHHS will tackle its federally required duty to conduct ex parte reviews for each of the 600,000 current HMP recipients to determine if they are eligible for any other Medicaid categories. MDDHS is required to make a redetermination of eligibility without requiring information from the recipient, if the recipient has already provided reliable information to the agency, through any of the other programs and databases that the MDDHS administers.[11] If unable to make a determination based on the information on file, the agency must then make an individualized request for any specific, additional items of information needed to complete that determination, before deciding to terminate their Medicaid.[12]

In *Dozier v. Haveman*, MDDHS was ordered by the court in October 2014 to conduct ex parte reviews for beneficiaries with Plan First! family planning coverage before terminating their

[10] September 1, 2015, Michigan Department of Health and Human Services's "Amendment to Michigan's Section 1115 Demonstration Known as the "Healthy Michigan Plan,"" pg. 2, available at http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/mi/mi-healthy-michigan-pa.pdf
[11] *See* 42 C.F.R. § 435.916(a).
[12] 42 U.S.C. 1396a(a)(8); 42 C.F.R. § 435.930(b); 42 C.F.R. § 435.916(a), (b), (d), and (f).

benefits. [13] In spite of the court order, MDDHS has failed thus far failed to comply with federal regulations for conducting those reviews and asserts that is sufficient to make beneficiaries start from scratch and submit all new Medicaid applications, without first reviewing the information already contained in each recipient's file. [14]

The HMP waiver application also fails to address MDHHS's duty to thereafter provide each HMP recipient whom MDHHS intends to terminate from Medicaid a timely, adequate, individualized notice[15] and a meaningful opportunity to be heard[16] regarding the individual's ineligibility for the other Medicaid categories.[17] It is unclear how long it would take MDHHS to complete such reviews and provide the required notices following these reviews for 600,000—but it seems reasonable to assume that four months would not be adequate. Recent filings in *Dozier v. Haveman*, *supra*, indicate that MDHHS is either or unwilling or unable to perform such ex parte reviews in the time frame provided by the legislature. In *Dozier*, MDHHS was ordered on October 29, 2014, to perform ex parte reviews for approximately 24,000 recipients before terminating their Plan First! Medicaid coverage. In May 2015, seven months later, the review process remained untouched.[18]

Conclusion

For the foregoing reasons, the Center for Civil Justice strongly opposes Michigan's second HMP waiver application and believes it should also be rejected by CMS. As fully explained above, this second HMP waiver application would be extremely harmful to low-income Michiganders, would undermine the goals of the Medicaid program, and implicates substantial legal questions and issues. Therefore, the Center for Civil Justice urges MDHHS to instead focus its efforts on working with the Michigan Governor and state legislators to remove the statutory barriers that would halt the continuation of the current HMP program, which has already been approved by CMS to continue through December 31, 2018.

Sincerely,

THE CENTER FOR CIVIL JUSTICE

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[13] *Dozier v. Haveman*, No. 14-12455, 2014 U.S. Dist. LEXIS 153394 (E.D. Mich. Oct. 29, 2014).
[14] Brief for Defendant's Response in Opposition to Plaintiffs' Motion for Summary Judgment at Dkt. 49, Pg ID 1402-1403, *Dozier v. Haveman*, No. 14-12455.
[15] U.S. Const. Amend. 14, § 1; 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.206–.210, 435.919.
[16] 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.206–.210.
[17] *See Crippen v. Kheder*, 741 F.2d 102, 107 (6th Cir. 1984); *Crawley v. Amande*, No. 08-14040, 2009 U.S. Dist. LEXIS 40794 (E.D. Mich. May 14, 2009); *Dozier v. Haveman*, No. 14-12455, 2014 U.S. Dist. LEXIS 153394 (E.D. Mich. Oct. 29, 2014).
[18] Brief for Plaintiffs' Motion for Show Cause Order at Dkt. 42, Pg ID 916, *Dozier v. Haveman*, No. 14-12455.